
EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

☐ All Child Care Evaluator Manual Holders
☐ All Residential Care Evaluator Manual Holders
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Subject:

Reference Material: Facility Evaluation

Reason For Change:

To transmit changes to the Facility Evaluation Section 3-4610 (Required Annual Visits). Language has been added to clarify when it would be necessary to conduct a visit after the effective date of a revocation action.

Filing Instructions:

☒ REMOVE – Pages 16 - 17
☒ INSERT – Pages 16 - 17

Approved:

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7-22-04

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3-4000 FACILITY EVALUATION REPEALED 11/03**3-4000****3-4010 GENERAL STATEMENT****3-4010**

The purpose of this section is to provide the Licensing Program Analyst with a basic understanding of their role and responsibilities and how to conduct a facility evaluation. Emphasis will be placed on the facility evaluation process to enable the Licensing Program Analyst to recognize the various degrees of deficiencies and to determine the appropriate course of action because of assessing the “total picture.”

3-4100 LICENSING PROGRAM ANALYST ROLE**3-4100**

The mission of the Community Care Licensing Division is to protect the health and safety of children and adults in out-of-home community care facilities through the administration of a regulatory enforcement program.

The Licensing Program Analyst is the key staff person who is responsible for carrying out the mission of the Community Care Licensing Division in the field. To fulfill this responsibility, the Licensing Program Analyst uses the three Community Care Licensing Division program components:

1. **Prevention** - The reduction of predictable harm by screening out unqualified applicants and by providing applicants and licensed providers with information regarding the laws and regulations concerning the operation of Community Care Licensing Division facilities.
2. **Compliance** - The process that ensures that Community Care Licensing Division facilities are operated according to applicable laws and regulations. Compliance will be maintained through facility inspection, issuing deficiency notices, and providing consultation regarding the correction of deficiencies.
3. **Enforcement** - A range of corrective actions (from civil penalties to facility closure) taken when a provider fails to protect the health and safety of people in care or is unwilling or unable to maintain compliance with licensing laws and regulations.

The Licensing Program Analyst has contact with licensees, clients and others. The manner in which the Licensing Program Analyst conducts himself/herself is critical to the public image and success of the program. The attitude and approach that the Licensing Program Analyst exercises during this contact must reflect the Core Values of the Department:

Compassion

Treat all people with dignity, fairness and courtesy.

Diversity

Solicit and listen to all ideas from people of various backgrounds and philosophies. Include these same people in policy and program considerations.

Simplification

Eliminate unnecessary regulations and paperwork, de-emphasize process, and emphasize goals and outcomes.

Service

Provide effective and responsive service with skill and integrity.

3-4100 LICENSING PROGRAM ANALYST ROLE (Continued)**3-4100**

The expectation is that services are delivered in a courteous, prompt and professional manner. Rudeness or intimidation is never justified regardless of the level of cooperation from the licensee or facility representative. Unprofessional conduct nullifies or diminishes the authority needed to administer the program.

In order to be successful, the Licensing Program Analyst must have the ability to develop and sustain a well-balanced and business-like relationship with the licensee. This requires impartial evaluation of facilities to measure compliance, documentation of findings and providing verbal/written consultation. The Licensing Program Analyst must be objective and use good judgement when considering the intent of regulations, the context of the violation and the impact on those in care. Improper application of licensing laws and regulations invalidate legitimate citations and are more subject to challenges, appeals and unnecessary correspondence.

Advising (consultation) a provider on how to meet a regulatory requirement is an essential part of the Licensing Program Analyst role and is used in all three components of the program. The Licensing Program Analyst should be able to advise a provider as to how they can meet a regulatory requirement or correct a cited deficiency. Licensing Program Analysts have the authority to seek compliance with regulations through providing alternative solutions to a situation. Consultation to seek compliance must be restricted to regulatory requirements. Consultation also includes providing the licensee with information on their rights to appeal decisions and file complaints.

There is no requirement that Licensing Program Analysts must find some kind of a deficiency every time a site visit is made. The facility evaluation process (Section 3-4200) allows for a variety of actions to be taken by the Licensing Program Analyst to facilitate correction. The actions available to the Licensing Program Analyst range from issuing citations with very short correction times to not issuing a citation and providing advisory notes under specified conditions. In some instances the Licensing Program Analyst may observe conditions that require referral for suspension or revocation of license or involvement by law enforcement agencies. The following sections will provide the Licensing Program Analyst with the basic procedures to perform a facility evaluation.

3-4150 REVIEW OF FACILITY FILE**3-4150**

One of the most important functions prior to conducting a visit is reviewing the facility file. This review gives the licensing staff an overview of the facility's history regarding previous visits, complaints, etc. The file review is also necessary to ensure all required forms and verifications are on file and up-to-date. Use the Facility Visit Checklist (forms LIC 9118 – 9123) for the appropriate facility type to review the file.

For State licensed facilities, the Central Operations Branch in Sacramento will receive a computer generated copy of the "Notice of Facility/Home Roster" 150 days prior to the anniversary date of the facility license. It will be the responsibility of Central Operations Branch to mail this Roster out to the licensee 120 days prior to the anniversary date of the license. The roster lists all persons associated with the facility/home, either cleared, exempted or pending.

3-4150 REVIEW OF FACILITY FILE (Continued)**3-4150**

The licensee is instructed to update the roster and return it to the Licensing Program Analyst with any required documents or verifications. This form will be helpful when the Licensing Program Analyst conducts the visit to verify the background check status of all persons working or residing in the facility. Whether the licensee returns the roster or not, the Licensing Program Analyst should print out a current copy of the roster to take to the facility for the visit.

An individual with a pending status may not work or reside in the facility until he/she receives a clearance or an exemption. If during the visit the Licensing Program Analyst finds evidence that an individual without a clearance or an exemption works or resides in the facility the Licensing Program Analyst must cite a Type A violation and assess an immediate civil penalty.

For County licensed facilities, it is important for the Licensing Program Analyst to verify the background check status of all individuals associated with the home prior to a visit to the home.

3-4200 FACILITY EVALUATION**3-4200**

The facility evaluation is the most important job performed by the Licensing Program Analyst. Through the evaluation process, one, two or all three components of the Community Care Licensing Division's program (prevention, compliance and enforcement) are implemented. Using this process during the site visit, the Licensing Program Analyst will evaluate if the facility is in substantial compliance with licensing laws and regulations. Substantial compliance is determined by an evaluation of the overall conditions of the facility and the health and safety of clients in care. During this evaluation, the Licensing Program Analyst will assess the various levels of violations and determine whether to cite the facility, provide verbal or written consultation or initiate no action at all. A flow chart of this process is shown in Section 3-4210. This process applies to all facility categories, including family day care homes and foster family homes.

The purpose of citing facilities for violations of regulations is to ensure the health, safety and personal rights of the clients in care. When a violation of a regulation is observed, the Licensing Program Analyst has a responsibility to determine and assess if a citation is to be issued and the length of time by which correction must be made. The basic factors to be considered in making this assessment are the consequences to those in care, the immediacy of the need to correct, the frequency of occurrences and the specific regulatory and/or statutory requirement. This assessment focuses on the type of clients served and the facility plan of operation. After making an assessment based on this criteria, the Licensing Program Analyst may cite a violation giving an immediate (24 hour) plan of correction, cite a violation with a longer plan of correction or provide consultation without issuing a citation. The three types of violations of regulations and/or statutes are as follows:

- I. **IMMEDIATE IMPACT (Type A)** - Are violations of the regulations and the Health and Safety Code, that if not corrected, have a direct and immediate risk to the health, safety or personal rights of clients in care. These violations are characterized by short-term correction plans with a \$50 per day civil penalty assessment for failure to correct. **NOTE:** This civil penalty assessment is not applicable to family child care homes, foster family homes or any governmental entity.

3-4200 FACILITY EVALUATION (Continued)**3-4200**

- II. **POTENTIAL IMPACT (Type B)** - Are violations of the regulations and the Health and Safety Code that, without correction could become a risk to the health, safety or personal rights of clients, or a record keeping violation that would impact the care of clients and/or protection of their resources, or a violation that would impact those services required to meet clients' needs. These violations are characterized by citations with longer plans of correction. A \$50 per day civil penalty is assessed for failure to correct. **NOTE:** This civil penalty assessment is not applicable to family child care homes, foster family homes or any governmental entity.
- III. **TECHNICAL (Type C)** - Are violations of the regulations that do not present an immediate (Type A) or potential (Type B) negative impact to the health, safety or personal rights of clients in care and where the licensee is in substantial compliance in degree, frequency and intent. No citation will be issued for technical violations. Refer to subsequent pages for further information on these types of violations. Either a verbal or written consultation is issued for technical violations. The Licensing Program Analyst does not, under any circumstances, issue a citation for any condition(s) that is not related to regulations. Refer to Section 3-4500 "Misinterpretation of the Regulations".

Prior to conducting a site visit, the Licensing Program Analyst must thoroughly review the facility file to familiarize himself/herself with the history of the facility and the client population served. **For further instructions see Section 3-4150 Review of Facility File.**

The Licensing Report LIC 809 will be used for all **Required Annual Visits and Random Sample Visits**. Apply the following criteria for all facility categories:

Before or upon entering the facility, the Licensing Program Analyst must identify himself/herself to the licensee, or person in charge and explain the purpose of the visit. At this stage of the visit, it is important to establish good communication and allow the facility licensee or person in charge to discuss any concerns he/she may have regarding the visit. The site evaluation then must begin with an overall assessment of the facility. Throughout this evaluation, the Licensing Program Analyst will be making observations and taking notes. The facility evaluation includes, but is not limited to the following:

1. A walk through to inspect the entire facility and overall maintenance and operation, i.e. physical plant, building and grounds, and furniture, fixtures, equipment and supplies. The Licensing Program Analyst should always provide the option for the licensee or person in charge to accompany him/her during the walk through.
2. Interview a small sample of clients/residents and discuss any particular areas of interest and concern (i.e. food services, medication, care and supervision).
3. Determine if records are available and in place to review during the evaluation.
4. A complete review of regulations **applicable to the facility category.**
5. Documentation of Type A and Type B violations and Type C technical violations using either verbal and/or written consultation.

3-4200 FACILITY EVALUATION (Continued)**3-4200**

6. Completion of the exit interview with the facility operator or person in charge. During the exit interview it is the Licensing Program Analyst's responsibility to review each violation and correction due date **and** provide verbal or written consultation on how corrections can be made. The licensee or person in charge is responsible for providing a written plan of correction on the licensing report for each violation cited.

Advise the licensee of their appeal rights and the procedures to follow. Provide the licensee with a copy of the LIC 9058 (Applicant/Licensee Rights and Appeal Procedures form). The licensee should also be informed that the appeal must be filed within ten days from the date of the report. Instructions on how to file the appeal are on the LIC 9058 form.

The Licensing Program Analyst must be able to recognize the various types or degrees of violation(s) and determine the appropriate course of action using the notations and observations he/she has made during the site visit.

The effective use of the facility evaluation process requires the Licensing Program Analyst to be familiar with the facility's history, have an understanding of the characteristics and needs of the client population being served and be able to capture an overview of the conditions which affect the plan of operation. Collectively, this will provide the Licensing Program Analyst with the framework to understand how licensing regulations can be applied so as to temper enforcement with technical assistance and consultation and avoid citations that are trivial and insignificant to the health, safety, and personal rights of those in out-of-home care and the overall operation of the facility.

The Licensing Program Analyst must be able to justify his/her findings and the course of action provided to the licensee to ensure correction. If a statutory or regulatory requirement is specific, the written citation will identify the controlling statute or regulation, the deficiency observed and the location of the deficiency. When a statutory or regulatory requirement is not specific, the deficiency statement will require an explanation of the immediate or potential impact on clients and/or the facility plan of operation or how the specific statute or regulation was violated.

This explanation is critical when citing regulations that have language that is subject to many interpretations such as: "clean, safe sanitary and in good repair" or "safe, and healthful.

When citing regulations that are not specific, the Licensing Program Analyst must determine and analyze how or in what way a particular incident or condition will result in a negative impact to those in care. The responsibility for identifying the adverse impact to clients and providing justification to support the reason for a citation is on the Licensing Program Analyst. This information will enable the licensee to better understand a deficiency citation in terms of the nature of the problem, why it requires correction and what is needed to assure substantial compliance.

The following is an explanation and examples of the three types of violations and how they are to be addressed by the Licensing Program Analyst. Actual documentation samples will be provided in the Documentation Section of the Evaluator Manual and through staff training.

3-4200 FACILITY EVALUATION (Continued)

3-4200

- I. **Type A: Immediate Health, Safety or Personal Rights Impact** - Are violations of the regulations and the Health and Safety Code that, if not corrected, have a direct and immediate risk to the health, safety or personal rights of those in care. Citations for these violations will always be written even if the violation is corrected during the site visit (corrections will be noted on the licensing report). In some instances, violations of these types of regulations may present such a severe threat that it would require suspension or revocation of a license. In all cases the licensee must initiate corrective action to render the situation harmless as soon as possible. In most instances, full compliance is to be completed on the spot or within a 24-hour period. However, in some instances the final correction may be extended for up to 30 days if the licensee has initiated corrective action to minimize or eliminate the health and safety risk, the facility has a history of compliance, or other factors such as transfer trauma and the availability of an alternate placement. The Licensing Program Analyst must first consider these elements when granting this extension.

EXAMPLES OF TYPE A VIOLATIONS: (AS APPLIED TO SPECIFIC HEALTH AND SAFETY SUBJECT AREAS)

1. **Criminal Record Clearance and Child Abuse Index Check** – For all individuals who work, reside or have contact with clients, failure to obtain a criminal record clearance or exemption and, for facilities that care for children, a Child Abuse Index Check clearance.
2. **Fire Safety** - Violations of fire clearance regulations include over capacity, non-ambulatory clients when cleared for ambulatory only, or failure to maintain smoke detectors and/or fire extinguishers in operating condition. Since the Department is dependent upon fire authorities to determine appropriate fire life safety standards, the licensee must always operate within the terms and limitations of the license and be approved by the State Fire Marshal or local fire authority.
3. **Personal Rights** - Violations that have a direct negative impact on either the physical or emotional well being of clients and children in care. These include violations such as: physical abuse, sexual abuse, verbal abuse, neglect, withholding food and water, the inappropriate use of restraints, locking clients/children in buildings (without licensing approval); the use of corporal punishment and the failure to safeguard the cash resources and/or valuables of those in care. In addition to immediate correction of personal rights violations, the licensee may be required to take other appropriate measures such as the suspension of employees and meeting reporting requirements.
4. **Telephones** - Failure to have a working telephone on the facility premises.
5. **Health Related Services** - Failure to treat injuries or illness and/or summon emergency medical personnel or a physician for injuries or illness; failure to ensure that needed medical care is provided to those in care; unlocked medications; inappropriate storage of medications (e.g. not refrigerating medications that require refrigeration); using or storing mislabeled, unlabeled, outdated or discontinued medications; not assisting with the taking of medications; or not dispensing medications “as prescribed”.

3-4200 FACILITY EVALUATION (Continued)**3-4200**

6. **Food Service** - Failure to maintain enough food to meet the needs of the clients for the next 24 hours; food contaminated with mold, fungus or bacteria; bloated or ruptured canned foods; infestation of insects or vermin; unsanitary conditions in food preparation areas that present an immediate health hazard; storing food next to or with toxic substances or poisons; or not providing modified diets as prescribed by a physician.
7. **Care and Supervision** - Failure to meet staffing ratio or staff are not present to meet the needs of clients in care; clients require a level of care that cannot be met by facility staff; Indicators of care and supervision problems include evidence of abuse, neglect, injuries or personal rights violations; wandering and AWOL clients; public nuisance complaints and other incidents that can be directly attributed to a lack of supervision.
8. **Buildings and Grounds** - No fence or approved cover for bodies of water; broken window glass in accessible areas; exposed live electrical wires; broken stairs or stair railings; poisons, toxic substances, materials with sharp or jagged edges and/or firearms in areas accessible to clients/children; unlit stairwells used by clients; broken or sharp edges on play equipment; or no cushioning under play equipment.
9. **Fixtures, Furniture, Equipment and Supplies** - Facility toilets are not in working condition or unavailable to clients; garbage is accessible to clients/children (excluding paper waste); unscreened fireplace or heaters that are in use; water is over 120 degrees F.; condition of bedding or towels is unsanitary to the extent it is a health and safety risk; furniture is broken and could cause injury if used; or failure to maintain enough basic hygiene items to meet the needs of those in care for the next 24 hours.
10. **Water Supply** - No current bacteriological analysis on private water source which establishes the safety of the water; or drinking water is not available.

- II. **Type B: Potential Health, Safety or Personal Rights Impact** - Violations of the regulations and the Health and Safety Code that, without correction, could become an immediate risk to the health, safety or personal rights of clients, or record keeping violation that would impact the care of clients and/or protection of their resources, or a violation that would impact those services required to meet clients' needs. If correction is made during the site visit, a verbal or written consultation may be provided to the licensee by the Licensing Program Analyst. However, there may be a situation where the licensee repeats the same violation(s) over and over again due to apparent carelessness or intentional disregard of the regulations, the Licensing Program Analyst may issue a citation, require an explanation of the immediate or potential impact on the clients and/or on the facility's plan of operation.

The decision by the Licensing Program Analyst to issue a citation or provide either a written or verbal consultation is based on the history of the facility, the frequency and degree of the violation, current overall condition of the facility and the existence of other violations. If the violation is not corrected during the site visit, a citation is always issued. The Licensing Program Analyst must be able to justify all citations, his or her findings and the course of action provided to the licensee to insure correction.

3-4200 FACILITY EVALUATION (Continued)**3-4200****EXAMPLES OF TYPE B VIOLATIONS: (AS APPLIED TO SPECIFIC HEALTH AND SAFETY SUBJECT AREAS)**

1. **Reporting Requirements** - Failure to notify the Department within the next working day and provide a written report regarding incidents of abuse, neglect, death, injury which requires treatment by a licensed medical professional, fires or other disasters.
 2. **Record Keeping** - Failure to provide documented verification of staff qualifications; the designated administrator is not certified or has an expired administrator certificate; lack of admission agreements, immunization records, staff medical assessments, needs and services plans; no record of client's personal and incidental funds; or no client medical records.
 3. **Personal Rights** - Failure to make arrangements for religious services; opening of client's mail without authorization; restriction of phone use or visitors without approval from licensing.
 4. **Health Related Services** - No first aid supplies; failure to isolate clients/children with obvious signs of illness; or failure to notify parents of any illness or injury in a facility more serious than minor cuts and scratches.
 5. **Food Service** - Failure to maintain the required perishable and non-perishable food supplies; lack of menus to verify that clients dietary needs are met; failure to clean and sanitize dishes and utensils to ensure there is an adequate supply for the next meal; or malfunctioning refrigerator, freezer or stove that does not pose an immediate risk to clients, e.g. spoiled food.
 6. **Planned Activities** - No planned activities or notice of planned activities on file.
 7. **Buildings and Grounds/Personal Accommodations** - Changes/alterations in the use of the facility that could impact the capacity determination; multiple conditions that indicate an overall deterioration of the facility; or the failure to implement the plan of operation which includes maintenance and housekeeping. Indicators of an overall deterioration and failure to implement the plan of operation include widespread neglect of maintenance or unsanitary living and food preparation areas with no evidence of on-going corrective action.
 8. **Furniture, Fixtures, Equipment and Supplies** - Quality of furnishings should be cited as a Type B violation only when they are clearly damaged to the extent they are not functional (i.e. dresser is shabby, but operational vs. one that is broken and non-functional; a tear in the seat of a chair vs. exposed springs); inadequate number of toilets and sinks to meet the needs of the clients; or failure to provide a set of linens to each client.
- III. **Type C: Technical Conditions** - Are for violations of the regulations that do not present an immediate (Type A) or potential (Type B) risk to the health, safety or personal rights of clients in care and where the licensee has complied with the regulatory requirements substantially in degree, frequency and intent. No citations will be issued for a technical violation(s).

3-4200 FACILITY EVALUATION (Continued)**3-4200**

Frequent Type C violations generally do not pose an immediate health and safety risk, but may be indicators of carelessness, intentional disregard, or problems with the facility plan of operation. Frequent or widespread violations of regulations that are usually considered technical can be elevated to a Type A or Type B if it is determined that an immediate or potential risk exists. In these cases, the violation is no longer considered technical (Type C) and is cited as either a Type A or Type B violation. When writing the deficiency statement on the Licensing Report, the Licensing Program Analyst must describe the condition and the impact on the health, safety or personal rights of the clients and/or the facility plan of operation.

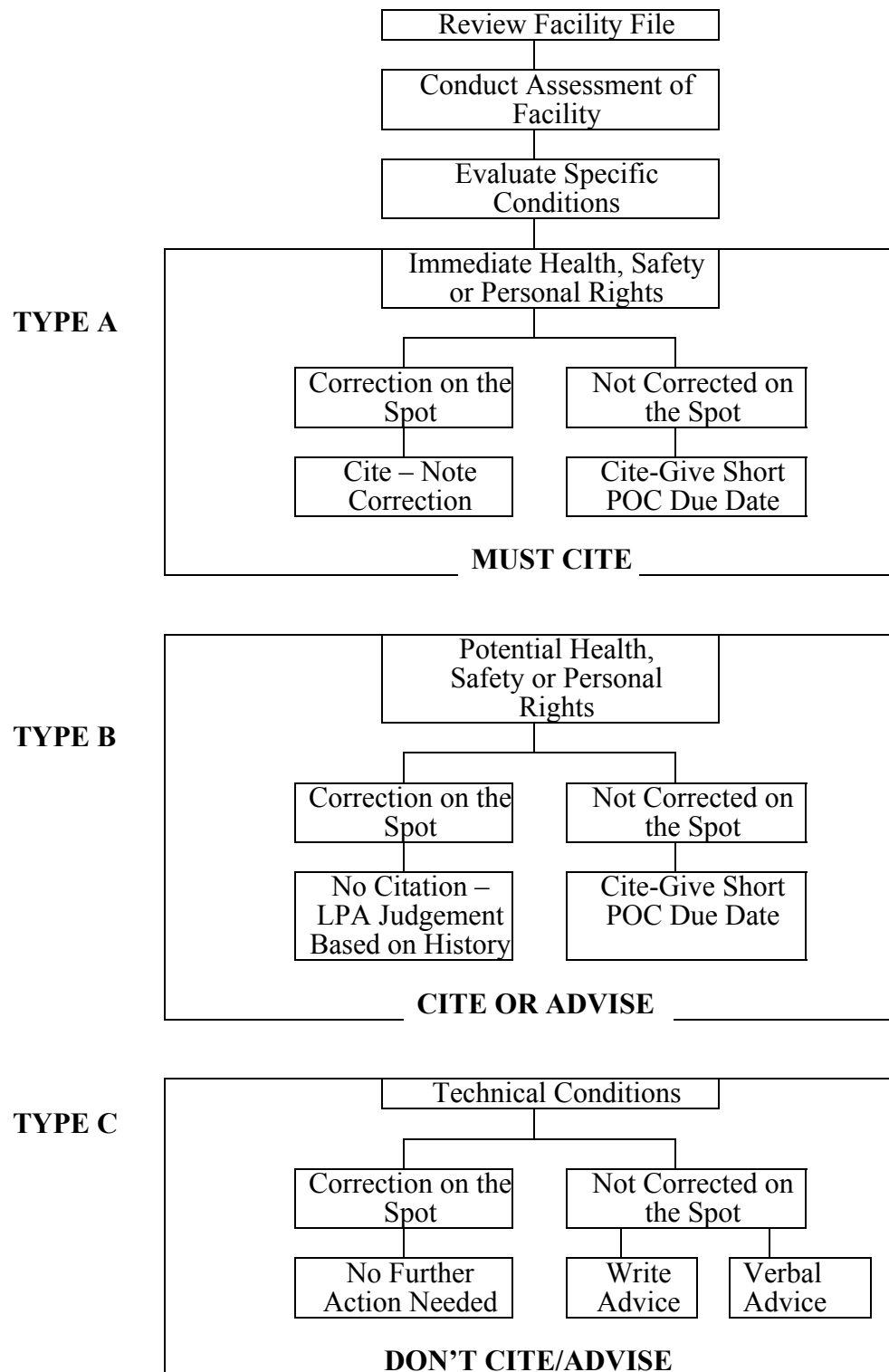
For violations that are technical, the Licensing Program Analyst has the option of providing verbal or written consultation. The decision to provide either written or verbal consultation depends on the Licensing Program Analyst's assessment based on the history of the facility, the frequency of the violations, the existence of other violations and the current overall facility operation. Written consultation for technical violations may include a description of specific items or groups of items to describe the general conditions of the facility. Failure to correct past technical violations alone does not warrant citation at subsequent visits if the conditions do not create a potential care and safety consequence. The primary objective of the written or verbal consultation is to ensure that the situation does not deteriorate further. Please refer to Section 3-4400 on Verbal/Written Consultation.

EXAMPLES OF TYPE C VIOLATIONS:

1. **Reporting Requirements** - Failure to either call in or follow up with a written report those incidents not listed in Type B; missing information that is not critical on the incident report; reports not received in a timely manner when the licensee has reported all relevant information by phone.
2. **Record Keeping** - Documents that are centrally stored that are required to be in each file; missing information on forms that is not critical to the care and services provided; a review of a significant sample size of required documents indicates only one document missing; or client's records do not indicate ambulatory status and the evaluator has observed client is fully ambulatory.
3. **Health Related Services** - One or two items missing from the first aid supplies.
4. **Food Service** - Menus that are not dated; home-canned foods stored at facility and there is no evidence of contamination or that they are used by clients.
5. **Building and Grounds** - Failure to obtain prior approval for minor construction or alterations that do not affect the services or capacity determination e.g., new garage door or new windows; defects on walls, ceiling, carpeting, floors, or tiles that do not create a dangerous condition.
6. **Fixtures, Furniture, Equipment and Supplies** - Hot water temperature is two or three degrees below the minimum; or drawer space is available but does not meet the minimum requirements, i.e. one drawer large enough to accommodate all clothing instead of the minimum requirement of two drawers.

3-4210 FACILITY EVALUATION PROCESS CHART

3-4210



3-4300	USE OF THE FOCUS VISIT REPORTS (Repealed 2/1/00)	3-4300
3-4400	VERBAL/WRITTEN CONSULTATION (ADVISORY NOTES)	3-4400

The verbal/written consultation approach is a way to assist the licensee to maintain compliance with licensing laws and regulations without issuing a citation. The intent is to avoid issuing citations for violations that are technical in nature and do not present an immediate or potential health, safety or personal rights risk to those in care. A plan of correction or civil penalty notice will never be associated with a written consultation.

The Licensing Program Analyst has the option of providing a verbal or written consultation for a technical violation based on the history of the facility, frequency of violations and the existence of other violations. Verbal consultation will not be documented at all and no further action is required. However, a written consultation will be documented separately as "Advisory Notes" and are not to be filed in the public section of the facility file. The Advisory Notes are to be placed in the "Confidential" section of the facility file. Under the Public Information Act, the Department is required to disclose any information placed in the "Confidential" section of a facility file, unless statutory or regulatory requirements prohibits such disclosure. Since the Department has no such laws or regulations in place, Advisory Notes must be made available for public review upon request. The Advisory Notes must always be kept separate and must never be referenced or associated to the Licensing Reports or used as a basis to take administrative action against the licensee. Advisory notes are not citations. These notes will provide the licensee with advisory assistance without issuing a citation. They also provide a record for the Licensing Program Analyst to make reference on future visits for informational purposes only.

The primary purpose/objective of using written (Advisory Notes) or verbal consultation is to ensure that the situation does not deteriorate further. If the technical violation becomes so frequent and widespread as to pose an immediate or potential health and safety risk, Licensing Program Analysts should be citing as immediate or potential risk type violations instead of providing written (Advisory Notes) or verbal consultation. The citation, however, does not make reference to previous written (Advisory Notes) or verbal consultation, but rather, describes the condition and the impact on the health, safety or personal rights of the clients and/or the facility operation.

The notes can be brief and may include a description of the specific item(s) or groups of items to describe the general condition of the facility. These notes should be written in a narrative format, friendly in tone and should not list regulation numbers. Avoid using the terms "violation", "deficiency", "correction" and "penalty". Please see the next page for an example of an advisory note.

In addition, the Licensing Program Analyst has the opportunity to document positive comments as long as they are specific to the condition(s) of the facility or staff. For example, the Licensing Program Analyst observed that on (date) all the children were engaged in an active and fun activity of coloring and painting and the activity room was kept clean and in an orderly fashion. The Licensing Program Analyst must avoid using overly broad or general comments that reflect overall facility operation (e.g. the facility is always clean or in my opinion, the licensee does an excellent job).

ADVISORY**NOTES**

FOR: _____

DATE: _____

The following notes are not kept in the public section of the facility file and are provided to you to assist you in the maintenance and operation of your facility. This is **not** a citation.

On June 3, 2003, I observed several small holes in the living room walls and a couple of small tears on the curtain. I found these conditions did not affect the operation of the facility; however, you may want to patch up the holes and tears or alert your maintenance staff to these areas.

In addition, I found the food preparation area clean, orderly and in good repair.

Please contact me if you have any further questions at _____ .

Licensing Program Analyst

3-4500 MISINTERPRETATION OF THE REGULATIONS**3-4500**

The information contained in this section is to provide examples that will enable the Licensing Program Analyst to recognize those conditions that are not violations of the regulations nor do they adversely impact the health, safety and personal rights of clients in care. These types of conditions are often a misinterpretation of the regulations. In some situations, the Licensing Program Analyst reads into the regulations more than what is required or applies his/her own standards of operation or housekeeping rules. For example, the Licensing Program Analyst should not cite for a small hole in the wall, or chipped paint, or a missing knob on the dresser unless he/she can apply it to a specific regulation and justify that there is an adverse impact to clients in care. These types of deficiencies are frequently cited under the general regulation section that states “the facility shall be clean, safe, sanitary and in good repair at all times for the safety and well being of clients, employees and visitors.” The Licensing Program Analyst should avoid using the general regulation section as a catch all for those conditions that have no impact or consequence to the clients in care. To cite under these types of situations/circumstances may be viewed as “nitpicking”.

It is the responsibility of the Licensing Program Analyst to present sufficient justification to explain why a condition is a violation of regulations. A citation, as written, must stand on its own merit. A licensee, a judge presiding over an administrative hearing, or others reviewing the public record should be able to readily understand the risk involved to clients and why such conditions need to be corrected. The examples below differentiate between those conditions not to be cited as they do not constitute a risk as written, and those conditions identified as having adverse consequences requiring citation and correction.

Not Citable as Written

- One burned out light bulb among many working lights.
- Requiring licensee to wash outside Sandbox toy.

Justified as Requiring Citation

The hallway light bulb over the steps leading to the bathroom was burned out causing a nighttime hazard. There is no supply of bulbs on the premises - no staff member is designated to check bulbs.

There was a large amount of animal excreta among the toys in the sandbox. The sand is contaminated. There is no sandbox cover available to prevent recurrence.

3-4500 MISINTERPRETATION OF THE REGULATIONS (Continued)**3-4500**

Some other examples of conditions that in most instances/circumstances are not to be cited are:

1. A cobweb on northeast side of the bedroom versus a cobweb with black widow spiders hanging on it;
2. Paint color is too bright or considered inappropriate;
3. Holes in living room walls that present no danger to clients;
4. Requiring a wall be painted because of soiled areas;
5. One burned out light among many working lights;
6. An uncovered pitcher of orange juice in a refrigerator that does not present a health hazard;
7. A small crack in the window versus a broken window;
8. A small tear in a curtain versus a shredded curtain;
9. A small tear in the fabric of a chair versus a chair with a broken leg;
10. Requiring cereals be stored in an airtight container rather than its original packaging or zip-lock bags;
11. Requiring the fireplace flue damper to be locked to prevent children from crawling up the chimney instead of the required screen to prevent access by children;
12. Requiring licensee to wash outside sandbox toys used by children when there is no evidence of health and safety hazards;
13. Requiring client's records be in alpha order;
14. Requiring the facility to be spotless (white-glove treatment);
15. Citing a Family Day Care Provider that takes a lunch break outside the home once a week because it is not child care related;
16. Requiring both a 5 foot fence around the pool and a cover on the pool when only one or the other is required in regulation;
17. Requiring that dishes, glasses and utensils match;
18. Requiring bedspreads and curtains match;
19. Specifying that "glasses" versus other types of drinking cups be used, i.e. mason jars or disposable paper cups;
20. Citing the licensee for substituting hot turkey sandwich when the menu specified hot beef sandwiches.

3-4600 FACILITY VISITS**3-4600**

As a result of the passage of Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003), Community Care Licensing will no longer make triennial visits to Family Child Care Homes or annual visits to all other facility categories. AB 1752 provides specific criteria for those facilities that the Department must visit annually. The facilities that meet the specific criteria as defined by statutes must receive an unannounced “Required Annual Visit”. The unannounced “Required Annual Visit” shall consist of a comprehensive evaluation.

In addition, the Department must conduct unannounced annual visits to no less than 10 percent of the other facilities not subject to the “Required Annual Visit”. The unannounced visits to the other facilities shall be conducted based on random sampling. Facilities subject to an unannounced “Random Sample Visit” shall also receive a comprehensive evaluation.

Required Annual Visits and Random Sample Visits to Foster Family Homes shall be announced. Licensing staff will notify the Foster Family Home licensee in advance of all visits, except in response to a complaint. Inspection visits to Foster Family Homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise. “Normal business hours,” are 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than State holidays.

Timely completion of complaint visits, case management visits, visits to follow-up incident reports, plan of correction visits and processing applications will continue to be priority activities, and will be an essential part of ongoing efforts to provide protection for clients in care.

Refer to Evaluator Manual Reference Material Section titled Comprehensive Evaluation Tools for category specific protocols to conduct a comprehensive evaluation.

3-4610 REQUIRED ANNUAL VISITS**3-4610**

Facilities that must receive a required annual visit are facilities that need closer attention either because of their compliance histories, or because of the Department’s inability to do any statistically effective sampling due to the small number of licenses in a given category. Facilities serving persons with developmental disabilities are to receive a required annual visit because the annual visit is a condition of continued federal funding. Following are the circumstances that would identify a facility to be subject to a “Required Annual Visit”:

1. Any facility on Probation or Provisional License status.
2. Any facility that has had a Non-Compliance Conference with the Regional Manager or county equivalent within the past two years, and has agreed to a Compliance Plan documented by a LIC 9111 Noncompliance Conference Summary or a Compliance Plan Conference Letter, as referenced in the Enforcement Action, Non-Compliance with the Licensing Laws and Regulations Section 1-0110 of the Evaluator Manual.
3. Any facility that has had a license revocation action submitted to Legal. The facility would also be scheduled for a required visit within 90 days after the effective date of the revocation action. **There is no need for follow-up by the local licensing office if it is known that the facility is not operating. This can be verified by visits from other agencies or the execution of a temporary suspension order.** At the time the Legal decision is rendered and effective, and the 90-day visit is completed, the facility is dropped from the required annual visit requirement unless it is on probation.
4. Any facility in which the licensee resides and an adult family member has been excluded during the past year.

3-4610 REQUIRED ANNUAL VISIT (Continued)**3-4610**

5. Any facility where there is reason to believe that the facility may not have removed an employee that has been excluded.
6. Any facility which has been vendorized by a Regional Center to serve persons with developmental disabilities, except for Foster Family Homes and Adult Day Programs.
7. Any facility in the following categories:
 - Child Care Center – Mildly Ill Children
 - Transitional Housing Placement Program
 - Community Treatment Facility
 - Small Family Home
 - Social Rehabilitation Facility
 - Residential Care Facility for the Chronically Ill

Contract counties must maintain a “required visit” list of facilities and the visits made. Separate lists must be maintained for Foster Family Homes and Family Child Care Homes.

3-4620 RANDOM SAMPLE VISITS**3-4620**

Facilities not identified as needing required annual visits will be subject to a 10 percent random sampling methodology developed by the Department of Social Services or the contract licensing county. Facilities selected for the “Random Sample Visit” are to receive a comprehensive evaluation.

- ***For all facility types except contract counties Family Child Care Homes and contract counties Foster Family Homes,*** the Licensing Information System will generate the 10 percent random sample visits and monthly lists of selected facilities by caseload.
- ***Family Child Care Home contract counties*** will select a 10 percent random sample. The method of sampling will be determined by the County based on the size of the Family Child Care Home caseload. Each county must maintain written documentation of the facilities visited as part of the sample as well as a tracking list separate from the “required visit” list.
- ***Foster Family Home contract counties*** will select a random sample of no less than 10 percent of the remaining Foster Family Home caseload. Counties may need to increase the sample to account for facility closures in order to ensure 10 percent of licensed facilities receive a visit. Those Foster Family Homes randomly chosen are to receive a comprehensive visit. The counties must develop their own random sample methodology to ensure that this provision is met. However, it is important to point out that AB 1752 requires that all Foster Family Homes receive a comprehensive visit at least once within five years. That means that, if necessary, the county must modify its sampling model to ensure that all facilities are visited at least once within a five year period.

For example, counties are to visit a 10 percent random sample of the remaining Foster Family Homes. Each county could select a new random 5 percent sample once every six months, commencing with November 2003. The method of sampling could require each county to select every 20th Foster Family Home from an alphabetical list of licensed Foster Family Homes, beginning with the first Foster Family Home on the list. For the second six month period, May 2004, select every 20th subsequent Foster Family Home. Remember to eliminate any Foster Family Home visited from the first sample and begin with the second Foster Family Home on the list.

3-4620 RANDOM SAMPLE VISITS (Continued)**3-4620**

Each Foster Family Home contract county must maintain written documentation of the Foster Family Homes visited randomly, as a separate list of the Foster Family Homes that receive annual visits. Counties with less than 50 licensed foster homes will instead pull their 10 percent sample twice each year. Counties that have 20 or less cases can pull a 10 percent sample once each year.

Facilities in the following categories are subject to a Random Sample Visit unless they meet the criteria for a Required Annual Visit as stated in Section 3-4610:

- Adoption Agency
- Foster Family Agency
- Foster Family Sub-Agency
- Foster Family Home
- Group Home
- Adult Residential
- Residential Care Elderly
- Adult Day Care
- Family Day Care Home
- School-Age Day Care
- Day Care Center